

Administrative Order



Administrative Order No.: 3-41

**Title: SMALL BUSINESS ENTERPRISE (SBE) PROGRAM
FOR THE PURCHASE OF GOODS AND SERVICES**

Ordered: 4/19/05

Effective: 4/29/05

AUTHORITY:

Section 4.02 of the Miami-Dade County Home Rule Amendment and Charter and Section 2-8.1.1.1.1 of the Code of Miami-Dade County.

POLICY:

- A. This Small Business Enterprise ("SBE") Program shall apply to all County and Public Health Trust contracts for the purchase of goods and services, including professional services other than architectural, engineering, architectural landscape and land surveying professional services governed by Florida Statutes 287.055. The SBE Program shall not apply to construction; leases or rental of real property; licenses and permits; concessions; franchise agreements; and contracts for attorney and/or legal services; and contracts for investment banking services.
- B. It is the policy of Miami-Dade County that a minimum of 5% of the total value of contracts \$50,000 and under be awarded to Micro Enterprises,
- C. Small Business Enterprise Measures may be applied to contracts greater than \$50,000.
- D. The application of contract measures to contracts for goods or services purchased by the Public Health Trust shall be governed by this Administrative Order, except that the Public Health Trust shall establish its own administrative procedures consistent with this Administrative Order to govern the application of contract measure to its purchases of goods and services except for construction and/or architectural and engineering services.

I. DEFINITIONS:

This Administrative Order incorporates completely, definitions listed in the SBE ordinance. Additional terms necessary for the understanding of this administrative order, are listed below:

- A. *Billing* means any request for payment by an SBE/Micro Enterprise, whether through a regular invoice, change order, claim, etc.
- B. *Board* means the Board of County Commissioners of Miami-Dade County, Florida.
- C. *Compliance Monitor* means the Director of the Department of Business Development or designee assigned to review compliance with Ordinance No. 05-29 and this Administrative Order.
- D. *Contract Measure* means a contract set-aside, a subcontract goal, a bid preference, or a selection factor, singly or in any combination.
- E. *Contracting Officer* means a department director or his/her designee, who prior to award manages the bid process or post award and has primary responsibility to manage the contract and enforce contract requirements.
- F. *County* means Miami-Dade County, Florida, a political subdivision of the State of Florida.
- G. *Debar* means to exclude a contractor, its individual officers, its shareholders with significant interests, its qualifying agent, or its affiliated businesses from county contracting and subcontracting for a specified period, not to exceed five (5) years.
- H. *NAICS* means North American Industry Classification System.
- I. *NIGP* means National Institute of Governmental Purchasing.
- J. *Review Committee* or *RC* means the committee established by the County Manager to review proposed contracts for the application of contract measures and for administrative and/or appeal hearings.
- K. *Utilization Report* means a report completed by the successful bidder on a contract that is set-aside, or on a contract with trade set-asides or subcontractor goals listing all work performed in the past month by the SBE identified in the subcontract agreement and all expenditures paid to date to the identified SBE.
- L. *Vendor* is one who sells goods and/or services.

II. MANAGEMENT & TECHNICAL ASSISTANCE PROGRAM

- A. Description

The Department of Business Development (DBD) will provide management and technical assistance and community outreach to certified SBEs and Micro Enterprises performing as vendors and providing goods and/or services to Miami-Dade County. These services will be referred to as the "Program."

B. Program Requirements

For Micro/SBE firms to participate in the MTA Program they must meet certain program requirements, which includes regular meetings with DBD and participation in community outreach events.

C. Management and Technical Assistance Services

The Department of Business Development will be responsible for providing services to small businesses that should include, but should not be limited to pre- and post-award services and access to business management services. Each firm will be assigned a Technical Assistance Coordinator in order to assess and address their particular needs.

D. Community Outreach

The Business Assistance Division of the Department of Business Development shall provide community outreach to stimulate the interest of the small business community in the program. The department shall design and implement an outreach program that will communicate the advantages of the program as well as convincing potential participants that contracting opportunities exist. The program shall provide on-going recruitment and assistance to small businesses.

E. Program Restrictions

The following restrictions shall apply to the program applicant:

1. An applicant who exceeds the Small Business Enterprise (SBE) Program size standards after one year of being formally notified is prohibited from continued participation.
2. Firm must have a place of business in Miami-Dade County.
3. Loss of certification shall result in prohibition from the program.

III. BONDING AND FINANCIAL ASSISTANCE PROGRAM

A. Program Description

Upon the County Commission's approval of a Bonding and Financial Assistance Program and award of the contracts necessary to implement same, SBEs/Micro Enterprises that are certified and in good standing with Miami-Dade County may be eligible to receive bonding and financial assistance. The County shall establish guidelines and procedures for the implementation of the Financial Assistance program to include eligibility requirements for application.

B. Program Requirements

1. Bond Application Assistance Process

Upon completion of the bond application package, the same shall be reviewed for completeness and thereafter shall be submitted to the entities with whom the County contracts for the Program. Any additional information required by such entities shall be requested directly from the SBE/Micro Enterprise with a copy of such request to DBD staff.

2. Bonding and Financial Application Process

- a. The Program participant will provide all the necessary documentation to complete a Bonding and/or Financial Assistance application. DBD, through partnering relationships with bonding agencies and lending institutions, shall assist SBEs/Micro Enterprises in obtaining bonding and financial assistance.
- b. DBD shall assist the Program participant in preparing and completing the Bonding and/or Financial Assistance application package.
- c. Upon completion of the Bonding and/or Financial Assistance application package, DBD staff will perform a review of the Program participant's application for completeness and thereafter submit same to the entities with whom DBD has partnered for the Program. DBD staff shall be notified of the approval status of the bonding or loan application.

IV. CERTIFICATION

A. Eligibility Requirements

1. DBD is the County agency responsible for certifying, decertifying and re-certifying applicants for the SBE/Micro Enterprise Program.

2. SBE/Micro Enterprise applicants must be profit-motivated businesses. Not-for-profit or non-profit corporations are not eligible for certification.
3. Only firms that meet size limits of SBEs/Micro Enterprises as to average annual gross revenues for the last three years or in the case of manufacturers and wholesalers - the number of full-time, permanent employees, may be certified as SBEs/Micro Enterprises.
4. Size determinations for SBEs/Micro Enterprises certification eligibility shall take into account the combined gross revenues of the applicant firm and all of its domestic and foreign affiliates or in the case of manufacturers and wholesalers – the number of full-time, permanent employees of the applicant firm and all of its domestic and foreign affiliates. All affiliates of the applicant firm, regardless of whether organized for profit, shall be included. Section F below provides additional information regarding affiliation determinations.
5. Applicants and certified SBEs/Micro Enterprises must be properly licensed to conduct business in Miami-Dade County, must perform a commercially useful function with an actual place of business in Miami-Dade County, must be established for at least one (1) year, and must continue to perform a commercially useful function in Miami-Dade County to be eligible for certification or to remain certified. When determining whether the applicant has an actual place of business in Miami-Dade County, DBD shall consider evidence such as, but not limited to:
 - a. If the principle place of business is not located in Miami-Dade County, then the 51% majority owner(s) must reside in Miami-Dade County;
 - b. The existence of a Miami-Dade County telephone number in the name of the SBE/Micro Enterprise or the name with which the SBE/Micro Enterprise is doing business; and
 - c. Offices, premises related to business, or other facilities within Miami-Dade County at which the goods or services to be provided are produced or performed.
6. Interested parties may obtain the certification application from DBD and are encouraged to request an explanation of the certification process. A copy of the certification application and an explanation of the certification process are also available on DBD's Web Page

through the County's Internet Portal. The Web Page address is <http://www.miamidade.gov/dbd>.

B. Terms of Certification

1. Certification for an SBE/Micro Enterprise firm is valid for a one (1) year period.
2. An SBE/Micro Enterprise firm, its individual officers, its shareholders, its qualifying agent or its affiliated businesses that has been denied certification/recertification or that has been decertified, is not eligible to apply for certification for twelve (12) months from the time of the denial or decertification.
3. An SBE/Micro Enterprise must be certified by the type of goods and/or services it provides in accordance with the applicable NAICS/NIGP Commodity Code in which the SBE/Micro Enterprise is registered and/or licensed (if applicable.) An SBE/Micro Enterprise can be certified in more than one NAICS/NIGP Commodity Codes.
4. A business owner, alone or as a member of a group, shall own or control only one SBE/Micro Enterprise at a time. If a non-SBE/Micro Enterprise in the same or similar line of business as an SBE/Micro Enterprise has an equity ownership of such SBE/Micro Enterprise that exceeds ten (10) percent, the SBE/Micro Enterprise shall not be certified or recertified.
5. Certified SBEs/Micro Enterprises shall provide written notice to DBD of any changes that affect their eligibility as SBEs/Micro Enterprises. SBEs/Micro Enterprises shall submit a Change of Request Form describing the nature and stating the effective date of the change(s) to DBD within thirty (30) calendar days of the effective date of the change(s). Change Request Forms will be available on-line or upon receipt of written notification from the firm. This form must be completed and returned to DBD in order for the change to be processed by DBD.
6. An SBE/Micro Enterprise must have a valid certification in effect at time of bid submittal. For successful bidders, certification must be maintained from the time of bid submittal throughout the duration of the agreement. With the exception of provisions described in the SBE/Micro Enterprise Ordinance for graduation from the SBE/Micro Enterprise program, loss of SBE/Micro Enterprise certification may lead to removal of the firm from continued participation in the SBE/Micro Enterprise program. DBD staff shall not be limited to

ERMs and/or site visits when attempting to determine continuing compliance with certification requirements.

7. SBEs/Micro Enterprises are responsible for returning the recertification application at least fifteen (15) calendar days prior to expiration of their current certification.

C. Certification Process

1. DBD shall collect, analyze and verify all information needed to establish the eligibility of an applicant and continued eligibility of SBEs/Micro Enterprises.
2. DBD shall attempt to make a certification decision within twenty calendar days of receipt of a completed application. An application is complete when it includes all required supporting documents.
3. DBD shall not certify an applicant, shall not re-certify an SBE/Micro Enterprise, and shall decertify an SBE/Micro Enterprise who:
 - a. Fails to comply with the criteria or procedures of the SBE Ordinance, this Administrative Order and/or participation provisions;
 - b. Fails to complete the application process;
 - c. Fails to provide full disclosure;
 - d. Falsifies information; or
 - e. Has been debarred by the County.
4. DBD shall certify each SBE/Micro Enterprise by the type of good and/or service it performs in accordance with the applicable NAICS/NIGP.
5. DBD shall give written notice, including the reasons for its decision, to applicants who are denied certification and to SBEs/Micro Enterprises who are decertified or denied recertification.
6. DBD may require applicants and SBEs/Micro Enterprises to submit information regarding their business operations including, but not limited to, a breakdown of the applicant's or

SBE's/Micro Enterprise's ownership and gross annual sales receipts.

7. DBD shall provide written renewal procedures and/or forms to certified SBEs/Micro Enterprises no later than thirty (30) calendar days prior to their certification expiration. DBD's failure to provide the form does not extend the firm's certification beyond the current expiration date.
8. DBD shall maintain and publish at least monthly, an updated list of SBEs/Micro Enterprises, identifying each listed based on each NIGP commodity code by which the SBE is registered.

D. Decertification

1. If during the period of certification, the County receives information that an SBE/Micro Enterprise received certification improperly or that the firm no longer qualifies to be certified as an SBE or Micro Enterprise, then DBD shall conduct an investigation of the allegations.
2. DBD shall recommend decertification of the firm if the investigation indicates that:
 - a. The firm cannot be contacted at the last known address;
 - b. The firm is no longer in business;
 - c. The firm is no longer licensed to do the type of business for which it was certified;
 - d. The firm obtained its original certification and/or recertification through false representation or deceit; or
 - e. The firm has been debarred by Miami-Dade County.
3. When decertifying an SBE/Micro Enterprise, DBD shall either:
 - a. Give notice to the SBE/Micro Enterprise that the decertification decision will be effective at the completion of any appeal under this Administrative Order; or
 - b. Suspend the certification of the SBE/Micro Enterprise during any appeal of the decertification decision.

E. Appeal of Certification Decisions

1. Applicants denied certification or decertified shall be notified in writing, setting forth the reasons for DBD's determination, and informed of their right to appeal DBD's decision.
2. Any firm that believes it has been wrongly denied certification or decertified may file an appeal in writing with the Director of DBD within fifteen (15) calendar days from the date of receipt of the notice.
3. DBD may extend time for filing an appeal or waive the time limit in the interest of justice, specifying, in writing, the reason(s) for doing so.
4. DBD shall forward all written appeals to the Review Committee (RC). The RC, or a committee thereof appointed by the chairperson of the RC, shall hear all appeals and forward recommendations regarding the appeal to the County Manager or his/her designee.
5. Decisions by the County Manager shall be final unless the County Commission agrees in its sole discretion, upon request of the affected party, to review the County Manager's decision.
6. DBD's Director will provide written notice to the affected party as to the outcome of the hearing within fifteen (15) business days of the date of the final determination.

F. Affiliation Determination

1. Affiliation: Firms are considered affiliates of each other when either directly or indirectly:
 - a. One firm controls or has the power to control the other, or
 - b. A third party or parties controls or has the power to control both, or
 - c. An identity of interest between or among parties exists such that affiliation may be found.
2. In determining whether affiliation exists, consideration shall be given to all appropriate factors, including common ownership, common management, and contractual relationships. Variations of these factors are examined more closely below:

a. Nature of control in determining affiliation

- 1) Every firm is considered to have one or more parties who directly or indirectly control or have the power to control it. Control may be affirmative or negative and it is immaterial whether it is exercised so long as the power to control exists.
- 2) Control can arise through stock ownership; occupancy of director, officer or key employee positions; contractual or other business relations; or combinations of these and other factors.
- 3) Control can arise through management positions where a firm's vote stock is so widely distributed that no effective control can be established.

b. Identity of interest between and among persons as an affiliation determinant. Affiliation can arise between or among two or more persons with an identity of interest, such as members of the same family or persons with common investments in more than one firm. In determining who controls or has the power to control a firm, persons with an identity of interest may be treated as though they were one person.

3. Affiliation through stock ownership.

- a. A person is presumed to control or have the power to control a firm if he or she owns or controls or has the power to control fifty-one (51) percent or more of its voting stock.
- b. A person is presumed to control or have the power to control a firm even though he or she owns, controls or has the power to control less than fifty (50) percent of the firm's voting stock, if the block of stock he or she owns, controls, or has the power to control is large as compared with any other outstanding block of stock.
- c. If each of two or more persons owns, controls or has the power to control less than fifty (50) percent of the voting stock of a firm; such minority holdings are equal or approximately equal in size; and the aggregate of these minority holdings is large as compared with any other stock holding, the presumption arises that each such person individually controls or has the power to control the firm; however, such presumption may be rebutted by a showing that such control or power to control, in fact, does not exist.

4. Affiliation arising under stock options, convertible debentures, and agreements to merge. Stock options, convertible debentures, and agreements to merge (including agreements in principle) are generally considered to have a present effect on the power to control the firm. Therefore, in making a size determination, such options, debentures, and agreements are generally treated as though the rights held thereunder had been exercised. However, an affiliate cannot use such options and debentures to appear to terminate its control over another firm before it actually does so.
5. Affiliation through common management. Affiliation generally arises where officers, directors, or key employees serve as the majority or otherwise as the controlling element of the board of directors and/or the management of another firm.
6. Affiliation through common facilities. Affiliation generally arises where one firm shares office space and/or employees and/or other facilities with another firm, particularly where such firms are in the same or related industry or field of operations, or where such firms were formerly affiliated.
7. Affiliation with a newly organized firm. Affiliation generally arises where former officers, directors, principal stockholders, and/or key employees of one firm organize a new firm in the same or a related industry or field of operation, and serve as its officers, directors, principal stockholders, and/or key employees, and the firm is furnishing or will furnish the other firm with sub-consulting agreements, financial or technical assistance, proposal or performance bond indemnification, and/or other facilities, whether for a fee or otherwise.
8. Affiliation through contractual relationships. Affiliation generally arises where one firm is dependent upon another firm for consulting agreements and business to such a degree that its economic viability would be in jeopardy without such agreements/business.
9. Affiliation under joint venture arrangements
 - a. A joint venture for size determination purposes is an association of firms and/or individuals, with interests in any degree or proportion, formed by agreement, express or implied, to engage in and carry out a single, specific business venture for joint profit for which purpose they combine their efforts, property, money, skill and knowledge, but not on a continuing or permanent basis for conducting business generally. The determination whether an entity is a joint venture is based upon the facts of the

business operation, regardless of how the business operation may be designated by the parties involved. An agreement to share profits/losses proportionate to each party's contribution to the business operation is a significant factor in determining whether the business operation is a joint venture.

- b. For the purpose of financial assistance to a joint venture, the parties thereto are considered to be affiliated with each other. Where the financial assistance, however, is to a firm for its own use, outside the joint venture, an affiliation determination shall not automatically arise from the existence of the joint venture arrangement. In this latter situation, the existence of affiliation shall be determined under these regulations.
- c. Firms proposing on a particular agreement as joint ventures are affiliated with each other with regard to performance of the agreement. This determination of affiliation does not extend to other contracts or business outside the joint venture arrangement.
- d. An ostensible sub-consultant which performs or is to perform primary or vital requirements of an agreement may have such a controlling role that it must be considered a joint venture affiliated on the agreement with the prime consultant. In determining whether sub-consulting arises to the level of affiliation as a joint venture, DBD considers whether the prime consultant has unusual reliance on the sub-consultant.
- e. Even though a firm might not be an affiliate of its joint ventures for the purpose of operations apart from the joint venture, it nevertheless must include its proportionate share of the joint venture receipts or employees in determining its eligibility under the size standards.

V. JOINT VENTURES BIDDING ON CONTRACTS WITH SBE MEASURES

- A. Bidders who are joint ventures, one of whose venturers is an SBE, may receive credit towards meeting an SBE contract measure where the joint venture has been approved by DBD in accordance with this Administrative Order. Joint ventures must be lawfully established as business entities with actual places of business in Miami-Dade County.
- B. Joint Ventures must be approved by DBD prior to bid submittal. A joint venture is permissible only where the SBE/Micro Enterprise lacks the necessary capacity to perform the contract on its own and the agreement is fair and equitable and will be of substantial benefit to the

SBE/Micro Enterprise. However, where DBD concludes that an SBE/Micro Enterprise brings only its certification as contribution to the joint venture relationship DBD will not approve the joint venture.

- C. The SBE/Micro Enterprise member of the joint venture shall be responsible for a distinct clearly defined portion of work of the contract and whose share in the capital contribution, control management, risks and profits of the joint venture are commensurate with its ownership interest.
- D. Agreements establishing joint ventures shall be in writing and shall specify work and financial risk assumed by the SBE/Micro Enterprise.
- E. Bid and contract documents shall require that the portion of the work to be performed by the SBE/Micro Enterprise member of the joint venture be set forth in detail separately from the work to be performed by the non-SBE/Micro Enterprise member.
- F. A joint venture agreement must specify the distribution of profits for the Joint Venture and must specify what the combined SBE or Micro Enterprise participants will receive and the specified percentage of the profits earned by the Joint Venture.
- G. Joint ventures must submit, prior to proposal submission, a Joint Venture Agreement containing the following:
 - 1. A description of the financial contribution of each member;
 - 2. A list of the personnel and equipment used by each member;
 - 3. A detailed breakdown of the responsibility of each member and the work to be performed by each member;
 - 4. An explanation of how profits and/or losses will be distributed;
 - 5. A description of any management or incentive fees for the member;
 - 6. A statement of the percentage of the joint venture that is owned and controlled by the qualifying members and the basis for such percentages; and
 - 7. A copy of any required State certificates or registrations.
- H. Joint ventures with at least fifty-one (51) percent SBE membership may bid on set-aside contracts valued \$500,000 and above. The SBE/Micro Enterprise participant in the joint venture shall count

towards meeting any subcontract goal with that portion of the total dollar value of the contract equal to the distinct clearly defined portion of the work that the SBE/Micro Enterprise performs.

- I. If the SBE member of the joint venture is unable to perform at anytime during the contract period, the non-SBE member shall subcontract with an SBE to provide the services to be provided by the prior SBE member. The non-SBE member must request approval for the change from DBD by submitting a request in writing addressed to the Director of DBD through the Contracting Officer. The request must include a subcontract agreement and verification from the SBE member that it is unable to perform. The Compliance Monitor shall review the request and make a recommendation regarding the SBE subcontractor to the Contracting Officer.

VI. PROGRAM MANAGEMENT

A. Contracts \$50,000 and Under

1. County Departments/agencies that issue or use contracts are required within the fiscal year to expend a minimum 5% of the total value of contracts for goods and/or services \$50,000 and under with Micro Enterprises. An automatic 10% bid preference will be applied to bids/quotes submitted by Micro Enterprises. The preference amount shall be deducted from the total bid or quoted price in order to calculate the price to be used for evaluation. County Departments are also required to solicit bids or quotes from at least four firms where available (two available certified Micro Enterprises and two non-certified firms).
2. DBD shall review reports of the utilization of Micro Enterprises and shall inform departments failing to meet the requirements set forth herein, and shall report awards to Micro Enterprises to the BCC bi-annually.

B. Contracts Greater than \$50,000

1. Prior to advertisement, each contract, purchase, or blanket purchase of goods or services in excess of fifty thousand dollars (\$50,000), and each purchase order that may accumulate an aggregate amount greater than fifty thousand dollars (\$50,000) shall be reviewed for the application of contract measures.
2. Departments shall submit contracts to DBD to review for the application of measures and shall work in conjunction with DBD in

making a recommendation. DBD shall seek concurrence with the issuing and user departments when making a recommendation. Departments shall advise DBD of any contract advertisement dates that are in excess of 120 days of the initial RC recommendation. Departments shall also advise DBD of any projects not advertised within 180 days of the RC action. Those contracts not advertised within 180 days will be re-submitted to the RC for reconsideration.

3. Department shall advise DBD of any changes in bid specifications, post award changes and all contracts with measures that are cancelled.
4. The County Manager or his/her designee may approve emergency purchases with measures that meet the County's definition of emergency. Such measures shall be presented to the RC for ratification.
5. Standard participation provisions shall be included in all contract documents with applied measures unless DBD approves substitute proposal documents.

VII. CONTRACT ADMINISTRATION

A. Pre-Award Compliance Review

1. Bid documents shall require bidders to submit a subcontract agreement at the time of bid submission identifying all SBEs to be utilized to meet the subcontractor goal, the commodity code of the work each will perform, the dollar value of such work, and incorporating the prompt payment obligations and rights provided by the SBE Program. Upon notification from DBD, bidders are allowed up to 48-hours after bid submission to cure correctable defects on the subcontract agreement. Failure to correct defects within 48 hours may be deemed non-responsive. Failure to submit the required subcontract agreement at the specified time shall deem the bid/proposal non-responsive. Correctable defects may include but are not limited to the SBE percentage not properly indicated, the prime or subcontractor failed to sign the subcontract agreement, or mere calculation errors.
2. The Compliance Monitor shall notify the bidder in writing stating the facts and the reasons on which the non-compliance is based. Upon notification from DBD, the bidder may request a meeting in writing within two business days from the date of the notification of non-compliance. The bidder shall supply further relevant information as

required by the Compliance Monitor. No new altered subcontract agreement will be accepted.

3. The Compliance Monitor shall issue a written recommendation to the Contracting Officer that includes facts and reasons for the bidder's compliance or noncompliance.

VIII. APPLICATION OF CONTRACT MEASURES

A. Set-asides:

The County Commission or Public Health Trust may determine it is in its best interest to waive competitive bidding or selection requirements and set-aside a contract for SBEs where, prior to bid advertisement, there are at least three (3) available SBEs to perform the set-aside contract.

B. Subcontractor Goals:

A recommendation to apply a subcontractor goal is appropriate when there are three or more certified firms available to provide the portion of the contract.

C. Bid Preference:

1. A 10% percent bid preference shall apply to contracts \$1 million or less and 5% percent on projects greater than \$1 million that are not set-aside. The preference shall be utilized for bid evaluation, and shall not affect the contract price. SBEs are not accorded a bid preference on contracts under \$50,000. Contract documents shall include standard language indicating the application of a bid preference.
2. On contracts on which a preference is applied, DBD shall conduct a periodic review of contracts hereunder and will prepare a report to the issuing department's director.

D. SBE Selection Factor

1. Any bidder that is an SBE or a joint venture with an SBE, shall be accorded a selection factor on RFPs, RFQs, and RFIs for contracts greater than \$50,000 that are not set-aside for bidding solely by SBEs. Contract documents shall include standard language indicating the application of a selection factor.

IX. BIDDER'S RESPONSIBILITY WHERE A SBE SUBCONTRACTOR GOAL IS APPLIED:

Bid documents to which an SBE subcontractor goal is applied shall require bidders to submit a signed subcontract agreement at the time of bid submission identifying all SBEs to be utilized to meet the SBE subcontractor goal. Each subcontract agreement shall specify the scope of work and commodity code the SBE will perform if appropriate, including the type goods or services the SBE will provide. Each subcontract agreement shall incorporate the prompt payment obligations and rights provided by the Small Business Enterprise Program. Bidders/proposers shall be allowed up to 48-hours to cure correctable defects in the subcontract agreement.

X. PROMPT PAYMENT:

It is the County's intent that all firms, including SBEs and Micro Enterprises providing goods and services to the County, shall receive payments promptly in order to maintain sufficient cash flow. The prime vendor in direct privity with the SBE must notify the SBE, the managing agency and DBD, in writing, of those amounts billed by the SBE that are in dispute, and the specific reasons why they are in dispute, within fourteen (14) calendar days of submittal of such billing by the SBE/Micro Enterprise. Failure of the prime vendor to comply with the applicable requirements of this Section shall result in the forfeiture of the right to use the dispute as justification for not paying the SBE and payment shall be forthcoming.

A. Contracting Officer's Responsibilities

1. The Contracting Officer administering a contract with an SBE measure shall forward undisputed billings from SBE/Micro Enterprise prime contractors to the Finance Department for payment within 14 calendar days of receipt of such billings.
2. The Contracting Officer must notify the SBE/Micro Enterprise prime contractor and DBD, in writing, of those amounts billed by the SBE/Micro Enterprise that are in dispute, and the specific reasons why they are in dispute, within fourteen (14) calendar days of submittal of such billing by the SBE/Micro Enterprise. Failure of the Contracting Officer to comply with the applicable requirements of this Section shall result in the forfeiture of the right to use the dispute as justification for not paying the SBE/Micro Enterprise and payment shall be forthcoming from the County by the next billing date or 30 calendar days from receipt of billing, whichever is less.

3. An SBE/Micro Enterprise prime contractor may invoice the County 1% interest per month for any undisputed amount that is not paid promptly as provided by this subsection.
4. DBD may investigate reported instances of late payment to SBEs/Micro Enterprises.
5. Departments shall report disputed invoices to the Board on a quarterly basis.

XI. POST AWARD COMPLIANCE AND MONITORING

- A. DBD shall monitor and enforce the compliance of the vendor with the requirements of this Administrative Order, and any related program requirements, during the duration of the contract and may monitor for up to one year after notice of completion of the work or full payment of contract obligations, whichever comes last.
- B. Successful Bidders and SBE/Micro Enterprises shall permit the County to have access during normal business hours to all books and records relating to the compliance with the contract measure applied to the contract or relating to compliance with certification requirements. This right of access shall be granted for one year after completion of the work or full payment of contract obligations, whichever comes last, or for one year after the expiration of SBE certification.
- C. Successful Bidders and SBEs/Micro Enterprises shall permit the County to have access to employees performing work during normal business hours in order to conduct visual inspections and interviews that may be conducted private when necessitated by County staff.
- D. Successful Bidders and SBEs/Micro Enterprises shall comply with all reporting requirements established by DBD. Failure to comply with the reporting requirements may result in the imposition of contractual sanctions or administrative penalties by the County.
- E. In the event that during the performance of a contract containing an SBE subcontractor goal, an SBE is not able to provide the services specified in the subcontract agreement submitted at the time of bid, the Successful Bidder must locate an SBE to substitute. The Successful Bidder must receive approval for substitution from DBD. A Successful Bidder that cannot secure a substitute SBE must provide a written statement to the Compliance Monitor.
- F. The Compliance Monitor shall be responsible for monitoring the performance of the Successful Bidder regarding compliance with a contract measure applied to the contract. The Compliance Monitor

may, at his or her discretion, investigate deviations in the utilization of SBEs from that required by the contract and make recommendations regarding compliance to the Contracting Officer. The Contracting Officer shall not make a final determination without a recommendation regarding compliance from the Compliance Monitor. Deviations from the contract measure stated in the contract that shall be monitored include, but are not limited to:

1. Termination of an SBE's subcontract agreement
2. Reduction in the scope of work to be performed by an SBE
3. Modifications to the terms of payment or price to be paid to an SBE
4. Failure to enter into a contract with an SBE being utilized to meet a contract measure

G. If, after execution of a subcontract agreement, the Successful Bidder submits a written request to the Contracting Officer and demonstrates to the satisfaction of the Contracting Officer that, as a result of a change in circumstances beyond his/her control of which he/she was not aware and could not reasonably have been aware, until subsequent to the date of execution of such subcontract, an SBE, who entered into such subcontract has committed a material breach of the subcontract agreement, the Successful Bidder shall be entitled to exercise such rights as may be available to him/her to terminate the subcontract agreement. The procedures of paragraphs H and I below apply to this paragraph.

H. County's Determination of Bidder's Excuse or Termination.

If the Successful Bidder at any time submits a written request to the Contracting Officer under the prior two paragraphs, the Contracting Officer as soon as practicable, shall determine whether the Successful Bidder has made the requisite demonstration, and shall not determine that such a demonstration has not been made without first providing the Successful Bidder, upon notice, an opportunity to present pertinent information and arguments. The procedures of paragraph I below apply to this paragraph.

I. Alternative Subcontracts.

If the Successful Bidder is excused from entering into a subcontract or rightfully terminates a subcontract under this Administrative Order and without such subcontract the Successful Bidder will not achieve the level of SBE participation upon which the contract was awarded, the Successful Bidder shall make every reasonable effort to propose and

enter into an alternative subcontract or subcontracts for the same work to be performed by another available SBE as appropriate, for a subcontract price or prices totaling not less than the subcontract price under the excused or terminated subcontract, less all amounts previously paid thereunder. The Successful Bidder must submit to the Compliance Officer a subcontract agreement with the new SBE and provide all documentation required by the County. A Successful Bidder that cannot secure a substitute SBE must provide all supporting documentation required by the County. The procedures of paragraphs 1 and 2 below apply to this paragraph:

1. The Compliance Monitor may require the Successful Bidder to produce such information, as the Compliance Monitor deems appropriate and may obtain further information from other sources. The Compliance Monitor shall make his/her recommendation under this paragraph to the Contracting Officer and forward a copy to the bidder.
2. The Contracting Officer will consider objections to the Compliance Monitor's recommendation only if such written objections are received by the Contracting Officer within five business days from the Successful Bidder's receipt of the Compliance Monitor's recommendation. The Contracting Officer with or without a hearing, and as he/she in his/her discretion may determine, will reply to the Successful Bidder's written objection within ten business days of receipt of these objections.

XII. CONTRACTUAL SANCTIONS

- A. Bid and contract documents shall provide that, notwithstanding any other penalties or sanctions provided by law, a bidder's or SBE/Micro Enterprise's violation of or failure to comply with the Small Business Enterprise Program Ordinance and this administrative order may result in the imposition of one or more of the following sanctions:
 1. The suspension of any payment or part thereof until such time as the issues concerning compliance are resolved;
 2. Work stoppage; or
 3. Termination, suspension, or cancellation of the contract in whole or part.
- B. In the event a bidder or SBE/Micro Enterprise attempts to comply with the provisions of this administrative order through fraud, misrepresentation, or material misstatement, the County shall,

whenever practicable, terminate the contract or require the termination or cancellation of the subcontract for the project on which the bidder or SBE committed such acts. In addition, and as a further sanction, the County may impose any of the above-stated sanctions on any other contracts and subcontracts the bidder or SBE has on other County projects. In each instance, the bidder or SBE shall be responsible for all direct and indirect costs associated with such termination or cancellation including attorney's fees and costs. The bidder or SBE/Micro Enterprise may also be subject to debarment.

- C. The foregoing notwithstanding, the County Manager shall include language in all prospective projects containing an SBE goal which provides that, in addition to any other sanction for failure to fulfill the SBE goal requirements for such contract, the contractor's eligibility to receive any future County contract shall be conditioned upon the contractor making up the deficit in SBE participation in such future contract by having SBEs perform work equal to double the dollar value of the deficiency in the SBE goal in the prior contract.
- D. The foregoing obligation shall be in addition to any SBE goal otherwise applicable to the future contract. The procedures for making up the SBE deficit shall follow DBD policy.
- E. Some of the contractual violations that may result in the imposition of sanctions listed in this administrative order include, but are not limited, to the following:
 - 1. An SBE/Micro Enterprise serving as a conduit for SBE work awarded to a firm as an SBE, but which is being performed by a non-SBE firm;
 - 2. A prime vendor not meeting SBE contract measure;
 - 3. Not obtaining or retaining SBE/Micro Enterprise certification while performing work designated for SBE/Micro Enterprise firms;
 - 4. Failure to timely submit utilization reports;
 - 5. Failure to comply with SBE/Micro Enterprise certification requirements, including not maintaining a place of business in Miami-Dade County, not reporting organizational and operational changes, providing inaccurate or false information, and other certification related violations;
 - 6. Failure to maintain certification;

7. Deviations from the SBE subcontract agreement without prior approval from DBD;
8. Termination of the SBE's subcontract agreement without prior approval from DBD;
9. Reduction of the scope of work of a first tier SBE subcontract without prior approval from DBD; and
10. Modifications to the terms and/or prices of payment to an SBE without prior approval from DBD.

XIII. Administrative Penalties

Administrative penalties may range from de-certification to debarment. The County Manager may impose, notwithstanding any other provision of this section, one or more of the following penalties for violation of or noncompliance with this administrative order and bid documents:

- A. The exclusion from county contracting and subcontracting for a specified period of time, not to exceed three (3) years, of a contractor, its individual officers, its shareholders with significant interests, and its affiliated businesses.
- B. The loss of eligibility to be certified as an SBE or Micro Enterprise for a specified period of time, not to exceed three (3) years, for an applicant or a SBE or Micro Enterprise, its individual officers, its shareholders with significant interests, and its affiliated businesses.
- C. Where a contractor, its individual officers, shareholders with significant interests, or its affiliated businesses, attempts to comply with the provisions of this administrative order through fraud, misrepresentation, or material misstatement, all such individuals and entities participating in the fraud, misrepresentation or material misstatement shall be excluded from County contracting, and SBE or Micro Enterprise certification for a specified period of time, not to exceed 5 years.
- D. If any individual or corporation, partnership or other entity, or any individual officer, shareholder with significant interests, director or partner of such entity or affiliated business of such entity participates in an attempt to comply with the provisions of this administrative order through fraud, misrepresentation, or material misstatement, all such individuals and entities participating in the fraud, misrepresentation or material misstatement shall be excluded from County contracting,

subcontracting, and SBE or Micro Enterprise certification, for a specified period of time, not to exceed five (5) years.

XIV. Appeals Process

A respondent may initiate the appeals process after administrative penalties are imposed.

- A. Appeals of decisions other than contractual violations, made under this Administrative Order by the Department of Business Development or other designees of the County Manager, shall be made to the County Manager.
- B. Decisions by the County Manager under this Administrative Order shall be final unless the County Commission agrees in its sole discretion to review any such decision.
- C. The County Manager shall designate procedures for the investigation, presentation and hearing of appeals.

This Administrative Order is hereby submitted to the Board of County Commissioners of Miami-Dade County, Florida.

George M. Burgess
County Manager